

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Darla Padgett, et al.,

NO. C 04-03946 JW

Plaintiffs,

**ORDER DENYING PLAINTIFFS' *EX*
PARTE APPLICATION FOR ORDER
SHORTENING TIME**

v.

Brian Loventhal, et al.,

Defendants.

Presently before the Court is Plaintiffs' *Ex Parte* Application for Order Shortening Time for Plaintiffs' Renewed Motion for Judgment as a Matter of Law; or in The Alternative, Request for New Trial. (hereafter, "Application," Docket Item No. 865.) Plaintiffs seek to have their pending motions heard prior to the September 28, 2009 scheduled hearing. Defendants filed a timely opposition. (See Docket Item No. 880.)

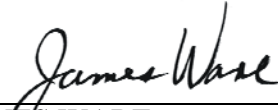
Plaintiffs contend that not hearing their motion for judgment as a matter of law will prejudice all parties in that they will incur greater expense and, should the Court decide to grant a new trial, witnesses' availability and memories will be at risk. (Application at 3.)

Ordinarily, a motion may not be heard "less than 35 days after service of the motion." Civ. L.R. 7-2(a). However, a court may modify its schedule "for good cause." Fed. R. Civ. P. 16(b)(4).

Here, Plaintiffs and Defendant Loventhal have noticed post-trial motions for September 28, 2009. (See Docket Item Nos. 859, 868.) In light of the Court's preference for hearing both matters in a single hearing, and the Court's current schedule, the Court finds that it cannot shorten the time for hearing Plaintiffs' and Defendant Loventhal's pending motions.

1 Accordingly, the Court DENIES Plaintiffs' *Ex Parte* Application for Order Shortening Time
2 for Plaintiffs' Renewed Motion for Judgment as a Matter of Law; or in The Alternative, Request for
3 New Trial.

4
5 Dated: July 2, 2009



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Andrew Vinson Stearns astearns@loboinc.com
3 Joseph C. Howard jhoward@hrmrlaw.com
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6 **Dated: July 2, 2009**

Richard W. Wieking, Clerk

7
8 **By: /s/ JW Chambers**
9 **Elizabeth Garcia**
10 **Courtroom Deputy**